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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA) 21MJ21
)
vs.
THOMAS F. SIBICK,) Buffalo, New York
) March 12, 2021
Defendant. 2:00 p.m.
- - - - - X

INITIAL APPEARANCE
Transcribed from an Electronic Recording Device

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

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2 P R O C E E D I N G S

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12:02:17 6 THE CLERK: This is United States versus
12:02:19 7 Thomas Sibick, docket No. 21MJ21. This is the initial
12:02:24 8 appearance on a Rule 5 proceeding. Assistant United
12:02:28 9 States Attorney Charles Kruly appearing on behalf of the
12:02:31 10 government. Assistant Federal Public Defender Attorney
12:02:35 11 Angelo Anzalone appearing with defendant. And United
12:02:42 12 States Probation Officer Andre McCray.

12:02:42 13 MAGISTRATE JUDGE SCHROEDER: Good afternoon.

12:02:47 14 MR. ANZALONE: Good afternoon.

12:02:49 15 MR. KRULY: Good afternoon, your Honor.

12:02:50 16 MAGISTRATE JUDGE SCHROEDER: Mr. Sibick, can
12:02:52 17 you hear me?

12:02:53 18 THE DEFENDANT: Yes, your Honor.

12:02:54 19 MAGISTRATE JUDGE SCHROEDER: I don't know if
12:02:57 20 you could just step back a little bit because I'm only
12:03:00 21 seeing your shoulders.

12:03:02 22 THE DEFENDANT: Yes. I was just standing up
12:03:04 23 for you, sir.

12:03:05 24 MAGISTRATE JUDGE SCHROEDER: Thank you.

12:03:06 25 That's better. We are conducting this proceeding this

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12:03:11 2 way, that is, by this video conferencing because it is
12:03:15 3 our belief and understanding that, based on scientific
12:03:19 4 and medical data, that if we were to bring everybody
12:03:23 5 together in one space, such as my courtroom, we increase
12:03:28 6 the risk of passing infection and becoming infected,
12:03:32 7 especially with the COVID-19 virus. So, in order to
12:03:35 8 keep you as safe as possible, as well as the attorneys,
12:03:40 9 the probation officer, and my courtroom deputy, and
12:03:43 10 myself, by doing it by video conferencing where
12:04:15 11 everybody is in their own separate space, we minimize
12:04:19 12 that risk of infection. So my question is: Do you
12:04:22 13 consent to the proceeding being conducted this way?

12:04:24 14 THE DEFENDANT: Yes, your Honor.

12:04:27 15 MAGISTRATE JUDGE SCHROEDER: Thank you. I
12:04:28 16 do have before me a waiver of Rule 5 and 5.1 hearings,
12:04:34 17 wherein you have indicated you are waiving your right to
12:04:39 18 an identity hearing and a probable cause hearing in this
12:04:42 19 district and you wish to reserve your rights with
12:04:45 20 respect to those hearings as well as any other rights
12:04:48 21 you have until such time as you appear in the United
12:04:55 22 States District Court in the District of Columbia, that
12:04:57 23 being the district in which the Complaint was issued.
12:05:00 24 Is that correct?

12:05:01 25 THE DEFENDANT: Yes, your Honor.

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12:05:03 2 MAGISTRATE JUDGE SCHROEDER: Okay. However,
12:05:06 3 I do want to advise you of the provisions that are
12:05:10 4 contained in Rule 20 of the Federal Rules of Criminal
12:05:14 5 Procedure, since you were arrested in the Western
12:05:18 6 District of New York and the charges arise out of an
12:05:21 7 offense allegedly occurring in the District of Columbia.
12:05:26 8 And what Rule 20 provides is as follows: You could
12:05:31 9 consent to a transfer of the case here to the Western
12:05:37 10 District of New York and enter a plea of guilty to the
12:05:39 11 charge and you would have to express that desire to do
12:05:44 12 that in writing. However, if you were to submit such a
12:05:51 13 writing where you wish to plead guilty or nolo
12:05:56 14 contendere, and to waive a trial, the United States
12:05:59 15 Attorney in both districts, that is the District of
12:06:02 16 Columbia and the District of Western New York, would
12:06:07 17 have to agree to such procedure and transfer. It is my
12:06:11 18 understanding that no agreement has been agreed to by
12:06:15 19 either United States Attorney from the District of
12:06:20 20 Columbia and/or the Western District of New York. And
12:06:22 21 it is also my understanding that you have not made
12:06:25 22 written application to exercise your rights under Rule
12:06:30 23 20. Is that correct?

12:06:34 24 MR. KRULY: Your Honor, I can --

12:06:36 25 MR. ANZALONE: Your Honor, I can address

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12:06:38 2 that. As far as I know, there is no indication that the
12:06:40 3 U.S. Attorney's Office would consent to that. That is
12:06:45 4 correct, your Honor, we have not explored that.

12:06:48 5 MR. KRULY: That is correct, your Honor.
12:06:50 6 The U.S. Attorney's Office for neither district have
12:06:52 7 consented.

12:06:53 8 MAGISTRATE JUDGE SCHROEDER: All right.
12:06:54 9 That being the case, then the only matter then is for
12:06:59 10 your return to the District of Columbia, Mr. Sibick, and
12:07:03 11 that will be under the custody of the United States
12:07:05 12 Marshal Service wherein and whereby they will transport
12:07:10 13 you as soon as reasonably possible to the District of
12:07:13 14 Columbia where you will then be brought before the
12:07:16 15 United States District Court that issued this Criminal
12:07:21 16 Complaint and arrest warrant. And, once again, your
12:07:23 17 rights to a preliminary hearing as well as a hearing
12:07:26 18 seeking bail and any other rights that you have under
12:07:29 19 the Constitution and the laws of the United States are
12:07:32 20 reserved to be raised, should you so desire, when you so
12:07:36 21 appear in the United States District Court in the
12:07:39 22 District of Columbia. Do you understand that?

12:07:42 23 THE DEFENDANT: Yes, your Honor.

12:07:44 24 MR. ANZALONE: Your Honor, if I may be heard
12:07:46 25 briefly?

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12:07:46 2 MAGISTRATE JUDGE SCHROEDER: Yes.

12:07:47 3 MR. ANZALONE: Thank you. It is our
12:07:50 4 intention, I know the Court just referred to Mr. Sibick
12:07:52 5 returning to the District of Columbia in the custody of
12:07:56 6 the U.S. Marshals, it is our intention to request the
12:07:59 7 Court release him in the interim so he can appear on his
12:08:04 8 own custody and on his own volition as he appeared in
12:08:08 9 the courthouse today.

12:08:11 10 MAGISTRATE JUDGE SCHROEDER: My
12:08:11 11 understanding, however, is that there is an arrest
12:08:14 12 warrant that was issued by the United States District
12:08:17 13 Court in the District of Columbia.

12:08:20 14 MR. ANZALONE: Well, that may be the case,
12:08:22 15 your Honor.

12:08:22 16 MAGISTRATE JUDGE SCHROEDER: Am I correct,
12:08:23 17 Mr. Kruly?

12:08:24 18 MR. KRULY: He was -- yes, your Honor, an
12:08:29 19 arrest warrant was issued for the defendant's arrest out
12:08:32 20 of the U.S. District Court out of the District of
12:08:36 21 Columbia. The defendant was advised of that warrant
12:08:39 22 yesterday and surrendered himself to the courthouse
12:08:44 23 today at 9:15. The government is moving, though, moving
12:09:10 24 for detention pending the defendant's return to the
12:09:13 25 District of Columbia.

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12:09:16 2 MAGISTRATE JUDGE SCHROEDER: Well, it's my
12:09:17 3 understanding under Rule 5 of the Federal Rules of
12:09:21 4 Criminal Procedure, that when the district in which the
12:09:25 5 alleged offense occurred properly issues a warrant for
12:09:29 6 the arrest of the defendant, the district in which the
12:09:33 7 defendant appears initially under Rule 5, that is the
12:09:37 8 Western District of New York, in this case, must honor
12:09:40 9 that arrest warrant, but reserving the rights of the
12:09:43 10 defendant upon his return to the district in which the
12:09:47 11 alleged offense was committed to seek and make
12:09:51 12 application for release. So I'm going to remand the
12:09:58 13 defendant to the custody of the U.S. Marshal's service
12:10:01 14 for the purpose of transporting him to the District of
12:10:04 15 Columbia and appearing in that court on the Criminal
12:10:10 16 Complaint and affidavit, which presently are in place
12:10:15 17 against him.

12:10:17 18 MR. ANZALONE: Your Honor, respectfully, if
12:10:20 19 I may be heard, please.

12:10:21 20 MAGISTRATE JUDGE SCHROEDER: Before I -- let
12:10:23 21 me finish.

12:10:24 22 MR. ANZALONE: Of course.

12:10:24 23 MAGISTRATE JUDGE SCHROEDER: And, Mr.
12:10:25 24 Sibick, you have received a copy of the Criminal
12:10:27 25 Complaint and the affidavit upon which it is based,

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12:10:30 2 correct?

12:10:31 3 THE DEFENDANT: Yes, your Honor.

12:10:33 4 MAGISTRATE JUDGE SCHROEDER: And did you
12:10:34 5 receive a copy of the arrest warrant?

12:10:35 6 THE DEFENDANT: I don't know if I have a
12:10:40 7 copy of the warrant, sir.

12:10:44 8 MAGISTRATE JUDGE SCHROEDER: Mr. Kruly, were
12:10:45 9 copies of the arrest warrant also made?

12:10:48 10 MR. KRULY: Yes, your Honor. And I provided
12:10:49 11 it to the Marshals and to Mr. Anzalone. I can ensure
12:10:57 12 that the Marshals provided Mr. Sibick with the arrest
12:11:01 13 warrant.

12:11:01 14 MAGISTRATE JUDGE SCHROEDER: Mr. Anzalone,
12:11:02 15 you want to say something?

12:11:03 16 MR. ANZALONE: I do, your Honor. I have a
12:11:05 17 different reading of Rule 5. I believe Mr. Sibick is
12:11:11 18 entitled to, if not an interim detention hearing, then
12:11:27 19 certainly a full detention hearing in this district,
12:11:30 20 that is the district in which he initially appeared in.
12:11:33 21 And if the Court's reading is that he is not entitled to
12:11:36 22 an interim detention hearing, then he is going to assert
12:11:42 23 his right to a full detention hearing. And I ask that
12:11:44 24 be held today. I'm certainly prepared to proceed. I
12:12:09 25 believe that the government, I could be wrong, but based

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12:12:11 2 on some conversations I had with Mr. Kruly, I believe he
12:12:15 3 is prepared to proceed and intends on relying on the
12:12:18 4 videos he provided to me this morning. That is my
12:12:22 5 anticipation that we would be doing today. And that is
12:12:25 6 what I request we do today. I don't believe Mr. Sibick
12:12:29 7 should spend time in custody when he self surrendered
12:12:34 8 this morning and was given the opportunity to walk into
12:13:00 9 court on his own volition. And, as your Honor said, the
12:13:04 10 sole purpose of today's proceeding is to set him up with
12:13:08 11 a future court date in another district. To me, that
12:13:11 12 doesn't make any sense your Honor. So I'm asking that
12:13:13 13 we have the opportunity to argue on his release.

12:13:17 14 MAGISTRATE JUDGE SCHROEDER: Well, in
12:13:19 15 response to that, I'm looking at the waiver of the Rule
12:13:24 16 5 and 5.1 hearings. And I note in the last box,
12:13:30 17 paragraph six of the waiver: "The defendant has waived
12:13:36 18 an identity hearing, production of the judgment, warrant
12:13:40 19 and warrant application, and any preliminary or
12:13:43 20 detention hearing to which I may be entitled in this
12:13:48 21 district," this district being the Western District of
12:13:50 22 New York.

12:13:51 23 MR. ANZALONE: That's right, your Honor.
12:13:53 24 It's a very --

12:13:53 25 MAGISTRATE JUDGE SCHROEDER: You waived the

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12:13:55 2 detention hearing.

12:13:56 3 MR. ANZALONE: He is not waiving that
12:13:57 4 detention hearing, your Honor. If that form indicates
12:13:59 5 that, then that is my error. It's a very confusing form
12:14:04 6 with multiple boxes. My understanding is he is
12:14:09 7 asserting his right to a detention hearing in this
12:14:12 8 district.

12:14:12 9 MAGISTRATE JUDGE SCHROEDER: Do you have the
12:14:13 10 waiver form in front of you, Mr. Anzalone?

12:14:17 11 MR. ANZALONE: I do, your Honor.

12:14:17 12 MAGISTRATE JUDGE SCHROEDER: Look at the
12:14:18 13 last box in the paragraph to the right of that box under
12:14:23 14 paragraph six. It appears to me he waived a preliminary
12:14:36 15 hearing in this district. And then that paragraph goes
12:14:38 16 onto say, he, "The defendant requests that his
12:14:42 17 preliminary hearing and/or detention hearing be held in
12:14:46 18 the prosecuting district at a time set by that court."

12:14:50 19 MR. ANZALONE: I understand that, your
12:14:51 20 Honor. That is not what he is asking for right now in
12:14:53 21 open court. He is asking for his detention hearing here
12:14:56 22 today. I was under the impression that he could ask for
12:14:59 23 his interim release between now and when he appears in
12:15:04 24 the District of Columbia. If that is not the case, that
12:15:07 25 waiver is not valid. He is not waiving that. I'm

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12:15:11 2 asking for a detention hearing under Rule 5(d)(3), which
12:15:17 3 indicates, "The judge must detain or release the
12:15:20 4 defendant as provided by statute or these rules."

12:15:25 5 MR. KRULY: And, Judge, the government's
12:15:26 6 understanding as well is that the defendant is entitled
12:15:29 7 to ask for his release or the government is entitled to
12:15:32 8 ask for detention in the arresting district. As Mr.
12:15:35 9 Anzalone said, I am prepared to go forward today.

12:15:38 10 MR. ANZALONE: So I apologize for the
12:15:40 11 confusion, that falls on me then. I'll take
12:15:43 12 responsibility for that. Mr. Sibick should not be
12:15:45 13 punished for that. And I'm asking the Court allow him
12:15:49 14 to assert his right to a detention hearing under those
12:15:53 15 rules today.

12:15:54 16 MAGISTRATE JUDGE SCHROEDER: What were you
12:15:55 17 citing, Rule 5 or 5.1?

12:15:57 18 MR. ANZALONE: Yes, your Honor. It's Rule
12:16:00 19 5, subparagraph (d) as in dog, which is the procedure in
12:16:05 20 a felony case. And then under that, your Honor, it is
12:16:10 21 subparagraph (3), which speaks to detention or release
12:16:14 22 and says that, "The judge must allow" -- I'm sorry, "The
12:16:18 23 judge must detain or release the defendant as provided
12:16:21 24 by statute or these rules."

12:16:27 25 MAGISTRATE JUDGE SCHROEDER: Right. And

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12:16:28 2 when I go back up and look at Rule 5.1 under paragraph
12:16:38 3 three, "Procedures in a district other than where the
12:16:42 4 offense was allegedly committed," it states under
12:16:47 5 subparagraph (d), "The magistrate judge must transfer
12:16:51 6 the defendant to the district where the offense was
12:16:54 7 allegedly committed if (1) the government produces the
12:16:58 8 warrant, a certificate of the warrant, or a reliable
12:17:03 9 electronic form of either, and the judge finds that the
12:17:06 10 defendant is the same person named in the indictment,
12:17:10 11 information or warrant." And since there is no identity
12:17:15 12 issue because the defendant waived his right to an
12:17:17 13 identity hearing and because the District of Columbia
12:17:20 14 issued a warrant, and because the defendant waived a
12:17:24 15 preliminary hearing in this district, as indicated in
12:17:27 16 the waiver form, I interpret then, the provisions of
12:17:34 17 paragraph three under Rule 5.3 to say that I've got to
12:17:38 18 honor the warrant of the District of Columbia and remand
12:17:41 19 the defendant to that district.

12:17:43 20 MR. ANZALONE: Your Honor, I have no dispute
12:17:45 21 that that section requires the Court to transfer Mr.
12:17:50 22 Sibick to the originating district. My dispute, and I
12:17:54 23 think it's borne out by the rules, there is nothing in
12:17:57 24 the rules that it has to be in custody, simply that the
12:18:01 25 case has to be transferred to the District of Columbia.

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12:18:04 2 And the rule expressly says, again, in Rule 5(d)(3),
12:18:08 3 "The Court must either release or detain the defendant
12:18:10 4 in accordance with these rules." That refers back to
12:18:16 5 the detention, the statute governing detention or, at
12:18:20 6 least, the Bail Reform Act, which states the Court can
12:18:23 7 only detain Mr. Sibick under certain circumstances and
12:18:29 8 he is entitled to a detention hearing to resolve that
12:18:32 9 dispute.

12:18:33 10 MAGISTRATE JUDGE SCHROEDER: Okay. I guess
12:18:34 11 the problem is created by my fact of reading the waiver
12:18:39 12 form, which said he was waiving a detention hearing.

12:18:43 13 MR. ANZALONE: I apologize. That is my
12:18:45 14 oversight, and that is not his position nor is it his
12:18:48 15 position, so I'm asking that we have the detention
12:18:50 16 hearing today and now, if the government is available
12:18:54 17 and the Court a ready to proceed.

12:18:56 18 MR. KRULY: The government is ready.

12:18:57 19 MAGISTRATE JUDGE SCHROEDER: All right.
12:18:58 20 Let's go forward with a detention hearing.

12:19:02 21 MR. KRULY: Yes, your Honor. The government
12:19:04 22 is moving for detention of the defendant pending his
12:19:07 23 transfer to the District of Columbia pursuant to 18
12:19:10 24 U.S.C. Section 3141(f)(1)(A), as the defendant is
12:19:15 25 charged with a crime that is a violation of 18 U.S.C.

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12:19:20 2 Section 2111, that constitutes a crime of violence. A
12:19:24 3 violation of 18 U.S.C. Section 2111, Judge, is a taking
12:19:28 4 by force, violence or intimidation of property from a
12:19:33 5 person of another within a special jurisdictional
12:19:36 6 territory within the United States. And solely for the
12:19:39 7 record in support of the Government's belief that
12:19:41 8 Section 2111 is a crime of violence, the government
12:19:44 9 relies on the Tenth Circuit's decision in *United States*
12:19:48 10 *vs. Shirley*, 808 F. App'x 672 at 677; the Ninth Circuit
12:20:09 11 case decision in *United States vs. Fultz*, 923 F. 3d 1192
12:20:14 12 as 1197; and the Second Circuit, which has held the
12:20:21 13 identical language in the federal bank robbery statute
12:21:03 14 categorically qualifies as a crime of violence, that is
12:21:25 15 *U.S. vs. Hendricks*, at 921 F. 3d 320. So, Judge, based
12:21:32 16 on that, the government is, as I said, moving for
12:21:36 17 detention pursuant to 3141(f)(1)(A), and we're asking
12:21:41 18 the Court to find that no condition or combination of
12:21:44 19 conditions can reasonably assure the safety of the
12:22:12 20 community or any person, and that is the defendant
12:22:14 21 should be detained pending his transfer to the District
12:22:18 22 of Columbia. The government must, of course, make this
12:22:21 23 showing by clear and convincing evidence. And the
12:22:24 24 government believes, after considering the 3142 (g)
12:22:27 25 factors, the facts support detention in this case. The

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12:22:43 2 first section 3142(g) factor, Judge, is, I think, the
12:22:46 3 most important in this case. And that is the nature and
12:22:48 4 circumstances of the offense. This is -- it's difficult
12:22:53 5 to underscore, Judge, the seriousness of the crimes of
12:22:58 6 which the defendant is charged. He is charged in taking
12:23:02 7 part in a riot at the lower west terrace of the U.S.
12:28:20 8 Capitol on January 6th, 2021. And, as the Court is
12:28:24 9 aware, both from the Complaint, and the Court can take
12:28:27 10 judicial notice, that that riot was fomented by
12:28:31 11 individuals who had the intent of undermining the
12:28:53 12 constitutional process of certifying the Electoral
12:28:59 13 College vote. There is no evidence that the defendant
12:29:04 14 organized the riot. But what the evidence shows, Judge,
12:29:57 15 is that the defendant was presented with multiple
12:30:01 16 opportunities to turn around and avoid the violence at
12:30:03 17 the Capitol that day. And every time he was presented
12:30:16 18 with an opportunity to turn around and avoid violence,
12:31:27 19 he went further and further and further. And,
12:31:35 20 ultimately, Judge, what that culminated in is the
12:31:47 21 defendant taking part in the assault of the Metropolitan
12:31:52 22 Police Department Officer who had responded to the
12:31:53 23 Capitol in order to secure the building. So where this
12:31:57 24 begins, Judge, is the defendant arriving at the Capitol
12:32:00 25 on the afternoon of January 6th, and the defendant has

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12:32:03 2 told the FBI that when he arrived at the Capitol, it was
12:32:07 3 mostly, as I believe he put it, regular people at the
12:32:11 4 Capitol. But that after several minutes, a group of
12:32:15 5 individuals wearing tactical gear and carrying weapons
12:32:29 6 arrived at the building. That is the defendant's first
12:32:31 7 opportunity to turn around and avoid what was, I think,
12:32:34 8 at that point, writing on the wall. But instead, Judge,
12:32:38 9 he stayed at the Capitol, and instead, Judge, of
12:32:42 10 leaving, he posted a video his Instagram, which I've
12:32:46 11 provided to Mr. Anzalone and provided to the Court. And
12:32:49 12 I'm not going to play it because of some technical
12:32:52 13 issues, but the video, Judge, shows the defendant in a
12:32:56 14 mob of people in front of the Capitol. The defendant
12:32:59 15 put a caption in the video that called this the "wildest
12:33:43 16 experience of my life!!!" The defendant then shouts into
12:33:50 17 the camera, "Just got tear gassed, but we're good baby.
12:34:17 18 We're good. We're pushing forward now."

12:34:20 19 So, Judge, this is the defendant's second
12:34:23 20 opportunity to turn around and avoid the violence, but
12:34:28 21 by his own words, he says, "we're going to push
12:34:31 22 forward." The defendant then pushed forward and he
12:34:33 23 worked his way towards a tunnel at the lower west
12:35:16 24 terrace of the U.S. Capitol that led into the building.
12:35:20 25 Excuse me. That tunnel, Judge, led to a set of double

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12:35:27 2 glassed doors that led into the building. The
12:36:00 3 defendant, as shown in the Complaint, entered the
12:36:04 4 building, or, excuse me, entered the tunnel and was part
12:36:07 5 of a group of people that were consistently and
12:36:10 6 regularly pushing forward in an effort to make way and
12:36:13 7 make entry into the building. At the front of that
12:36:16 8 line, Judge, or, excuse me, at the front of that mob,
12:36:20 9 Judge, was a line of police officers who had arrived to
12:36:23 10 secure the building and to push the mob back, yet the
12:36:37 11 defendant kept pushing and he was part of the group that
12:36:40 12 tried to make entry into the Capitol. At 3:11, a
12:36:45 13 surveillance video shows the defendant leaving the
12:36:49 14 tunnel. And as the defendant leaves the tunnel, and as
12:36:53 15 shown in the complaint, the defendant encounters another
12:36:57 16 person who helps the defendant leave the tunnel. The
12:37:29 17 person who helps the defendant asks the defendant where
12:37:31 18 he is from. And a voice off camera admittedly responds,
12:37:36 19 "Buffalo. Let's go. Let me just get refreshed." So
12:37:42 20 what we have now, Judge, is a defendant who had, I
12:37:46 21 think, his third opportunity to turn away from the
12:37:48 22 violence and turn away from the conduct at the Capitol.
12:37:51 23 But now he has called this "the wildest experience of
12:37:55 24 his life." And he said, "It's time to push forward."
12:37:58 25 And now he has said, "it's time to get refreshed." This

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12:38:02 2 is at 3:11. Approximately seven minutes later, Judge,
12:38:05 3 the defendant encounters a Metropolitan police officer
12:38:10 4 who was there, as I said, to protect the Capitol. And
12:38:14 5 that officer, Judge, was in the middle of being severely
12:38:17 6 and savagely beaten by a mob of people, some of whom
12:38:23 7 were trying to, as the officer recounted, to grab the
12:38:28 8 officer's gun from his holster to shoot him with his own
12:38:54 9 gun, people who were tasing the officer, people who were
12:38:57 10 trying to beat the officer. And, again, Judge, the
12:39:01 11 defendant is presented with now, what I believe, his
12:39:05 12 fourth opportunity to turn away from the violence, but,
12:39:07 13 instead, what the defendant does is reach in, Judge, and
12:39:11 14 I'm going to share my screen and share this video from
12:39:14 15 the officer's body cam to allow the Court see the
12:39:18 16 defendant's conduct. And what I'm sharing now is the
12:39:30 17 body cam footage of the officer who had arrived at the
12:39:34 18 Capitol to protect the building, who was at the police
12:39:37 19 line in the tunnel in the lower west terrace, who had
12:39:41 20 been pulled, at this point, pulled out of the police
12:39:43 21 line and is being assaulted by a vicious mob. We have
12:39:47 22 here, Judge, the defendant on the left side of the
12:39:49 23 screen reaching in. I'm going to play the video, which
12:39:54 24 is going to go in slow motion. Now the defendant is
12:39:58 25 clutching the officer's badge in his left hand. His

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12:40:02 2 right hand reaches in. The defendant has now grabbed
12:40:12 3 the officer's badge, he now still has the badge. The
12:40:20 4 officer's radio is pulled out by its antenna in the
12:40:25 5 defendant's hand. So, Judge, what we have so far is the
12:40:43 6 defendant presented with an, I believe, by my count,
12:40:46 7 four opportunities to turn away from violence at the
12:40:49 8 Capitol. And every time he is presented with the
12:40:51 9 opportunity to turn around, he goes further in. He
12:40:54 10 first goes into the tunnel that is trying to make entry
12:40:57 11 into the building. He then approaches an officer who is
12:41:00 12 being assaulted, and, by the defendant's claim,
12:41:04 13 attempts, the defendant's version, attempts to help the
12:41:08 14 officer remove himself from this mob who is assaulting
12:41:11 15 him. But, Judge, given the defendant's multiple
12:41:17 16 statements that he needs to get refreshed, that it's
12:41:20 17 time to push forward, it's very difficult to believe
12:41:23 18 that the defendant's intent when approaching the officer
12:41:26 19 was to help him.

12:41:28 20 So then, Judge, after, after January 6th,
12:41:31 21 after the riot has ended, the defendant returns to
12:41:33 22 Buffalo and he is eventually interviewed by the FBI on
12:41:37 23 several occasions. The defendant, Judge, ultimately, as
12:41:44 24 I said, is cooperative with the FBI, but only to a
12:41:49 25 certain degree, and tells several lies, several half

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12:41:52 2 truths, several false statements to the agents. And I
12:41:57 3 acknowledge that the defendant has no obligation to
12:41:59 4 cooperate with the FBI, but, of course, when he chooses
12:42:02 5 to cooperate, he has an obligation to provide truthful
12:42:06 6 information and not to provide false statements. What
12:42:09 7 we have here, Judge, is a pattern of activity, another
12:42:13 8 pattern of opportunities to reconsider and to make good
12:42:39 9 choices, to not lie to the agents, yet he continues to
12:42:42 10 lie and lie and lie. First, Judge, the defendant failed
12:42:46 11 to tell, during his first interview with the FBI, failed
12:42:49 12 to tell the agents that he had been part of the assault
12:42:52 13 of this officer, and that he failed to tell the officers
12:42:55 14 that he had taken the officer's radio and badge. He
12:42:58 15 then told the FBI that he did take the radio and badge
12:43:03 16 and left it in a garbage can in D C. He then told the
12:43:07 17 FBI that he, in fact, had brought the radio and badge
12:43:11 18 back to Buffalo, but that he had thrown them in a
12:43:44 19 dumpster on North Street in Buffalo. And then, finally,
12:43:47 20 after being told that this claim would be verified by
12:43:52 21 surveillance footage, the defendant called the FBI and
12:44:19 22 told them that he had thrown the radio out and buried
12:44:22 23 the badge in his backyard. So it wasn't, Judge, until
12:44:56 24 the third interview that the defendant acknowledged
12:44:58 25 stealing the officer's radio and badge. But even then,

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12:45:02 2 Judge, the defendant lied about what he had done with
12:45:05 3 these items. And it was only after the defendant was
12:45:08 4 told that he would be called on it, essentially, that he
12:45:11 5 owned up and admitted that he had buried the badge in
12:45:14 6 his backyard.

12:45:15 7 So, Judge, the weight or, excuse me, the
12:45:18 8 evidence supporting these charges is very strong. As
12:45:21 9 the Court just saw, the crime was captured almost
12:45:25 10 entirely on the officer's body worn camera video as well
12:47:03 11 as surveillance footage at the Capitol. The defendant
12:47:05 12 admitted on his Instagram that he was at the Capitol and
12:47:13 13 that he was going to "push forward" after he had been
12:47:18 14 tear gassed. And what this leads to, Judge, is the last
12:47:22 15 3142(g) consideration, which is the nature and danger if
12:47:28 16 the defendant was released. The defendant took part in
12:47:32 17 an attack on the U.S. Capitol, and then took part in a
12:48:08 18 further assault on a metropolitan police officer who had
12:48:11 19 arrived at the Capitol to protect the building. The
12:48:14 20 defendant entered the tunnel at the lower west terrace
12:48:42 21 of the Capitol and tried to break through a police line
12:48:45 22 to make entry into the building. This conduct, Judge,
12:48:48 23 shows a flagrant disregard for authority, a flagrant
12:48:52 24 disregard for law enforcement. And if the defendant
12:48:55 25 would not or could not or did not follow the almost

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12:48:58 2 certain commands of the officers of the police line at
12:49:15 3 the Capitol to turn around, I don't think that gives the
12:49:24 4 Court any confidence that he is going to follow the
12:49:26 5 commands of probation and the requirements of this
12:49:29 6 Court. And I acknowledge, as I said, that the defendant
12:49:47 7 turned himself in, but that was only, Judge, after a
12:49:51 8 month of lies to the FBI, of false statements, of half
12:49:55 9 truths, of all of the truth until we got to the point
12:49:59 10 where the defendant acknowledged that he, in fact,
12:50:02 11 brought the officer's badge back to Buffalo and buried
12:50:05 12 it in his backyard. What this shows, Judge, is a
12:50:08 13 willingness to actively deceive law enforcement, which I
12:50:13 14 think is antithetical to any hope that the defendant is
12:50:25 15 going to follow the commands and the orders of this
12:50:29 16 Court and pretrial services. So we would ask the Court
12:50:32 17 to find, Judge, by clear and convincing evidence, that
12:50:35 18 no condition or combination of conditions can reasonably
12:50:38 19 assure the safety of the community, and that the Court
12:50:41 20 remand the defendant to the custody of the U.S. Marshals
12:50:44 21 pending his transfer to the District of Columbia.

12:51:04 22 MAGISTRATE JUDGE SCHROEDER: Mr. Anzalone.

12:51:05 23 MR. ANZALONE: Thank you, your Honor. As
12:51:09 24 the Court is aware, the purposes of bail or detention
12:51:14 25 are not punitive. The Court has very limited reasons

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12:51:19 2 why the Court can hold an individual pretrial. First,
12:51:24 3 to ensure their appearance in court. I understand that
12:51:27 4 the government is not arguing that Mr. Sibick is a
12:51:29 5 flight risk. I did not hear them make that argument nor
12:51:33 6 do I think they can given that he voluntarily turned
12:51:36 7 himself in after being notified that there was a warrant
12:51:40 8 for his arrest. Secondly, as I believe the government
12:51:43 9 has argued, the Court can hold Mr. Sibick if it believes
12:51:47 10 that no conditions can be put in place which would
12:51:50 11 reasonably assure the safety of the community. Your
12:51:53 12 Honor, the government has presented a timeline this
12:51:56 13 morning or this afternoon of the events at the Capitol
12:52:00 14 that day. I would like to present my own timeline of
12:52:05 15 events that occurred since that day at the Capitol.
12:52:09 16 Judge, these are drawn from the Complaint. The
12:52:12 17 government first confirmed that Mr. Sibick was present
12:52:14 18 at the Capitol on January 21st. That is over a month
12:52:18 19 and a half ago, nearly two months ago. The government
12:52:24 20 confirmed that. The government first spoke, through the
12:52:26 21 FBI, with Mr. Sibick on January 27th. Again, nearly a
12:52:30 22 month and a half ago. On February 2nd, 40 days ago, Mr.
12:52:36 23 Sibick affirmatively reached out to the FBI after their
12:52:40 24 initial conversation. Your Honor, three weeks ago, on
12:52:45 25 February 23rd, the government apparently had access and

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12:52:50 2 had already evaluated and analyzed the body cam footage
12:52:54 3 on which it relies today as referenced in the Complaint.
12:52:57 4 Several days after that, your Honor, the government had
12:53:01 5 multiple conversations, interactions with Mr. Sibick
12:53:04 6 with regard to this badge. By my count, that is at
12:53:09 7 least six interactions that Mr. Sibick that the
12:53:12 8 government had prior to any involvement from the Court.
12:53:16 9 If, in fact, your Honor, the government believed that
12:53:19 10 Mr. Sibick was such a danger to the community, not just
12:53:23 11 that he had to be arrested, but also that no conditions
12:53:26 12 the Court could put in place, not even home detention,
12:53:29 13 not even home incarceration, if the government believed
12:53:32 14 he was such a danger to the community and such a
12:53:35 15 continuing danger, why, your Honor, why did they not
12:53:38 16 make swifter actions and take action immediately to try
12:53:41 17 and put him in custody? They didn't, your Honor. And
12:53:45 18 as the Court heard the government say just moments ago,
12:53:48 19 he was actually notified that there was an arrest
12:53:51 20 warrant and permitted him to turn himself in this
12:53:55 21 morning.

12:53:55 22 Your Honor, I would argue, those are not the
12:53:57 23 actions of an agency that believes that an individual is
12:54:00 24 a danger. That point is emphasized even more your Honor
12:54:05 25 when you consider what we're here for today. We're here

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12:54:07 2 for a Rule 5 proceeding, a transfer for Mr. Sibick out
12:54:12 3 to another jurisdiction. Particularly, your Honor, in
12:54:17 4 the age of COVID when these appearances are occurring by
12:54:20 5 video, I have racked my brain, and I cannot figure out
12:54:25 6 for the life of me why a Rule 5 proceeding is even
12:54:28 7 possible or is even necessary rather than just informing
12:54:32 8 Mr. Sibick that he had to appear by video in the
12:54:35 9 originating district, that is, in the District of
12:54:38 10 Columbia. The only thing that we're here for today
12:54:42 11 appears to be a manufactured opportunity for the Court
12:54:44 12 to detain Mr. Sibick while he is transported to the
12:54:49 13 District of Columbia. Appearances are happening
12:54:53 14 remotely across the country. There is no reason he
12:54:56 15 couldn't appear remotely, appear for initial appearance
12:55:54 16 in D.C. from Buffalo remotely by video, particularly if
12:55:59 17 the government was trusting him to turn himself in this
12:56:02 18 morning.

12:56:03 19 Your Honor, Mr. Sibick lives in Buffalo. He
12:56:06 20 owns a house at 61 Park Club Lane. He has resided there
12:56:10 21 for over two years. He resides there with his
12:56:13 22 girlfriend. He has strong family support in the
12:56:17 23 community. His mother and his father are both
12:56:21 24 separately calling in to this proceeding. They are
12:56:24 25 identified by the phone numbers, the 716 phone numbers

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12:56:28 2 on your Honor's screen. I'm not going to read them on
12:56:31 3 the record. They are both here. And if the Court does
12:56:35 4 not trust Mr. Sibick to be released to home detention or
12:56:56 5 home incarceration to his own residence, he can return
12:56:59 6 to his parents' residence and be kept under,
12:57:02 7 essentially, lock and key to make sure he is not a
12:57:05 8 danger to the community.

12:57:06 9 Your Honor, the Court has tremendous
12:57:08 10 discretion in terms of the conditions that can be
12:57:11 11 imposed. It can impose home incarceration. It cannot
12:57:15 12 allow Mr. Sibick to even step outside. It can impose
12:57:19 13 24-hour GPS monitoring. It can make sure that as soon
12:57:24 14 as he moves outside, probation is notified and probation
12:57:28 15 can notify the Court and the Court could take him into
12:57:30 16 custody. I don't believe that the government is arguing
12:57:34 17 that Mr. Sibick is a flight risk, but, regardless, I've
12:57:38 18 had Mr. Sibick's father take possession of his passport,
12:57:50 19 and he is prepared to surrender that to wherever he
12:57:53 20 needs to to ensure that Mr. Sibick is not going
12:57:57 21 anywhere. But, again, if he were going somewhere, he
12:58:01 22 already would have gone. He has been in communication
12:58:04 23 with the FBI for a month and a half and nothing has been
12:58:08 24 done in terms of flight.

12:58:10 25 Your Honor, Mr. Sibick was employed. He was

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12:58:22 2 employed until the FBI came to his place of employment
12:58:26 3 where he was relieved of his duties, but he has two jobs
12:58:30 4 waiting for him if he is released, both at nursing
12:58:33 5 homes, which is what he has done in the past. I
12:58:36 6 understand that Mr. Sibick was -- part of the allegation
12:58:39 7 was that he was part of something that was bigger than
12:58:42 8 him, but I think at the end of the day, your Honor has
12:58:45 9 to consider the particular circumstances of this
12:58:46 10 individual, and particularly given the government's --
12:58:52 11 the time the government took to get to this point. I
12:58:54 12 think it is very difficult to take that argument that he
12:58:57 13 is a danger now with anything other than a large grain
12:59:03 14 of salt.

12:59:04 15 I'm asking the Court to conclude that there
12:59:07 16 are conditions that can be imposed which would allow Mr.
12:59:42 17 Sibick to remain out, not necessarily in the community,
12:59:44 18 but in his home under home detention, home
12:59:47 19 incarceration, and would allow, if, at the end of the
12:59:50 20 day he is found guilty or he pleads guilty, then there
12:59:54 21 is a time for punitive measures. But right now, bail is
12:59:58 22 not meant to be punitive, your Honor. It's only meant
13:00:11 23 to ensure safety of the community. And it's my position
13:00:14 24 the Court can do that independently without holding him
13:00:16 25 in custody. Thank you.

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13:00:18 2 MAGISTRATE JUDGE SCHROEDER: Mr. Kruly, is
13:00:19 3 there a date set by the United States District Court for
13:00:22 4 the District of Columbia for the appearance of the
13:00:24 5 defendant?

13:00:26 6 MR. KRULY: Judge, my understanding is that
13:00:29 7 the practice in these cases around the country has been
13:00:32 8 for the Court in the arresting district to set a return
13:00:36 9 date in the District of Columbia. I was asked to inform
13:00:39 10 the Court and to request from the Court a return date
13:00:42 11 next week in the District of Columbia. So I believe we
13:00:47 12 can leave it to the Court's discretion as to a time and
13:00:52 13 date in the District of Columbia.

13:00:53 14 MAGISTRATE JUDGE SCHROEDER: Any time in the
13:00:54 15 week of March?

13:00:57 16 MR. KRULY: March 22nd, I believe. Forgive
13:01:04 17 me, March 15th.

13:01:09 18 MAGISTRATE JUDGE SCHROEDER: March 15th.
13:01:10 19 Mr. Anzalone, does Mr. Sibick have the financial
13:01:13 20 wherewithal to get himself to the District of Columbia?

13:01:16 21 MR. ANZALONE: He absolutely does, your
13:01:19 22 Honor. His father, who is on the line, could drive him.
13:01:23 23 He could drive him there by Monday, if need be.

13:01:28 24 MAGISTRATE JUDGE SCHROEDER: All right.
13:01:28 25 What I'm going to require is the defendant is to appear

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13:01:34 2 in response to the Criminal Complaint and the arrest
13:01:38 3 warrant presently pending in the District of Columbia on
13:01:46 4 March 16th, 2021 at 10 a.m. And in making that
13:01:59 5 decision, I want to have the record clear as to why I
13:02:02 6 have allowed for the defendant to voluntarily transport
13:02:09 7 himself to the District of Columbia. I understand the
13:02:12 8 government's position as to the crimes charged being
13:02:18 9 crimes of violence, I also, however, must take into
13:02:23 10 account the presumption of innocence to which the
13:02:26 11 defendant is entitled under the Constitution of the
13:02:29 12 United States. And so I'm faced with two presumptions.
13:02:34 13 A statutory presumption created by Congress finding that
13:02:38 14 certain types of crimes charged raise a presumption of
13:02:43 15 dangerousness to the community or members of the
13:02:45 16 community. But, as stated in the Act, that presumption
13:02:51 17 is a rebuttable one. The presumption of innocence is
13:02:57 18 not only stated in the Bail Reform Act, the same statute
13:03:02 19 in which the presumptive and dangerousness is contained,
13:03:07 20 but it's also stated as a constitutional right under the
13:03:10 21 Constitution of the United States. And it's that
13:03:13 22 constitutional right, which, in my opinion, is the one
13:03:17 23 entitled to the greater weight that we're talking about
13:03:21 24 presumptions. But in doing that, I don't take lightly
13:03:26 25 the charges in this case and what transpired on January

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13:03:31 2 6th, 2021. It would appear to me from what the
13:03:37 3 government has proffered as evidence of the activities
13:03:41 4 of the defendant on that date which resulted in the
13:03:45 5 Criminal Complaint, it has a strong case. I'm also
13:03:51 6 taking into account, and, quite frankly, I have concerns
13:03:56 7 in that when I look at the Pretrial Services Report, the
13:04:03 8 defendant has been accused of prior acts involving what
13:04:08 9 I consider to be acts of violence. And I'm referring
13:04:13 10 specifically to the charge that was issued in April of
13:04:45 11 2010. Admittedly, it's a charge that is 10 years old,
13:04:49 12 but, nevertheless, it's part of the history of the
13:04:51 13 defendant which I must take into account in deciding
13:04:55 14 this motion. Wherein the defendant was charged with
13:04:59 15 aggravated harassment in the second degree communicating
13:05:05 16 in a manner likely to cause alarm. Admittedly, a class
13:05:10 17 A misdemeanor, but, nevertheless, aggravated harassment
13:05:13 18 in the second degree indicates to me some type of
13:05:16 19 threats that would create alarm. When I look at the
13:05:24 20 date of October 24th, 2013, when the defendant
13:05:29 21 apparently was in Murray, Utah, he was charged in a drug
13:05:35 22 case involving possession of controlled substances for
13:05:41 23 which he was convicted, namely possession of marijuana.
13:05:46 24 When I look at the date of April the 19th, 2014, a
13:05:53 25 charge issued by the Lancaster Town Court, the defendant

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13:05:57 2 was charged with reckless endangerment first degree, a
13:06:02 3 class D felony, attempted reckless endangerment, second
13:06:06 4 degree, a class B misdemeanor which resulted in a plea
13:06:10 5 of guilty on July 10th, 2014 to attempted reckless
13:06:16 6 endangerment second degree. Those charges, once again,
13:06:23 7 indicate activities involving violence when you talk
13:06:26 8 about endangerment in the first degree and attempted
13:06:30 9 recklessness as set forth. And then in July of 2015,
13:06:40 10 once again in the state of Utah, Salt Lake City, the
13:06:44 11 defendant was charged with failure to stop at a command
13:06:48 12 of a police, a felony, and carrying a concealed loaded
13:06:53 13 firearm. And if that is a factual situation, the
13:07:02 14 carrying of a loaded firearm indicates also the
13:07:07 15 potential for acts of violence. So, I'm not discounting
13:07:13 16 lightly at all what the government is seeking in
13:07:17 17 presenting its argument as to why there should be
13:07:19 18 detention. But I'm also taking into account what has
13:07:25 19 been proffered by defense counsel as to the recent
13:07:28 20 events where the defendant was certainly put on notice
13:07:32 21 that the government, by way of the FBI, was taking a
13:07:36 22 close look at him and his alleged activities on January
13:07:40 23 the 6th, 2021 at the Capitol in Washington, D.C. So,
13:07:48 24 having been made aware that he is now the subject of an
13:07:51 25 investigation and having had more than one contact with

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13:07:56 2 FBI agents following up on their investigation, the
13:08:00 3 defendant, nevertheless, remained in the Western
13:08:05 4 District of New York up to the point of when, having
13:08:07 5 been advised that there was now a Criminal Complaint
13:08:10 6 against him with an arrest warrant, he voluntarily
13:08:15 7 surrendered to the appropriate law enforcement
13:08:18 8 personnel. It's that voluntary surrender coupled with
13:08:21 9 the period of time from when the FBI first contacted the
13:08:26 10 defendant until today, March the 12th, 2021, that causes
13:08:32 11 me to conclude that, one, the defendant hasn't been
13:08:35 12 charged with anything in the Western District of New
13:08:38 13 York to indicate danger to the community or members of
13:08:42 14 the community; and two, the defendant has not fled the
13:08:46 15 jurisdiction. So considering all of the facts and
13:08:50 16 circumstances in their totality, and considering the
13:08:54 17 fact that the defendant will be required by my order to
13:08:58 18 appear in the United States District Court for the
13:09:02 19 District of Columbia on March 16th, 2021, which is only
13:09:07 20 four days from today, I find that I can impose terms and
13:09:15 21 conditions that would reasonably protect the community
13:09:18 22 and members of it in the interim process.

13:09:23 23 And those terms and conditions are as
13:09:27 24 follows. The defendant is hereby placed on home
13:09:31 25 incarceration, which means he is not to leave the

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13:09:36 2 residence at which he will be residing. I'm also going
13:09:40 3 to require the defendant to reside with his parents as
13:09:43 4 defense counsel has indicated could happen. And I'm
13:09:51 5 going to rely on the defendant's father to make sure he
13:09:56 6 remains in the residence and that he does not leave.
13:10:00 7 And because I feel that that would be sufficient, I'm
13:10:04 8 not going to require the probation office to go through
13:10:06 9 the logistics of setting up electronic monitoring
13:10:12 10 considering the short period of time that will occur
13:10:16 11 between now and when the defendant will have to depart
13:10:20 12 for Washington D C. Undoubtedly, he'll have to depart,
13:10:25 13 if his father is driving him, either very, very early in
13:10:29 14 the middle of the night on the 16th or in the early
13:10:32 15 morning hours of the 16th of March or the day before,
13:10:37 16 that is, the 15th of March. The trip from Buffalo to
13:10:42 17 Washington D.C., I'm assuming, is going to take
13:10:45 18 approximately close to eight hours.

13:10:54 19 MR. KRULY: Your Honor, may I be briefly
13:10:57 20 heard?

13:10:58 21 MAGISTRATE JUDGE SCHROEDER: Certainly.

13:10:59 22 MR. KRULY: It's my understanding, Judge,
13:11:20 23 from conversations with the U.S. Attorney's Office in
13:11:23 24 the District of Columbia, that the government
13:11:41 25 respectfully intends to seek a review of the Court's

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13:11:44 2 release order pursuant to 18 U.S.C. Section 3145(a).

13:11:49 3 And to allow the U.S. Attorney's Office for the District
13:11:52 4 of Columbia to make that motion or at least to make a
13:11:55 5 motion for a stay, the government would respectfully
13:11:59 6 request a brief stay of the Court's release order.

13:12:04 7 MAGISTRATE JUDGE SCHROEDER: Well, we're not
13:12:08 8 talking about a lot of time. As I say, today is the
13:12:11 9 12th of March, and it is 1:49 p.m. in the afternoon. So
13:12:21 10 we're talking about, theoretically, Saturday and Sunday.
13:12:25 11 And it appeared to me that the defendant and his father
13:12:30 12 would have to start driving either on the 15th or
13:12:34 13 sometime, 1 or 2 o'clock in the morning to get to the
13:12:39 14 District of Columbia on the 16th at 10 a.m. I've also
13:12:43 15 indicated the defendant is to be in home incarceration.
13:12:46 16 So it's not a question of him going anywhere. And so if
13:12:51 17 he abides by that, where is the need for an appeal?
13:12:56 18 Where is the need for claiming there is any further
13:12:58 19 risk, especially as counsel for the defendant has
13:13:03 20 argued. The government was well aware of the
13:13:07 21 whereabouts of the defendant sometime in February up
13:13:09 22 until today and took no action. If he was such a
13:13:15 23 danger, and interviewed him a number of times and took
13:13:18 24 no action to have him detained. How can I intelligently
13:13:25 25 say, well, he is a danger to the community,

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13:13:27 2 notwithstanding the government thought there was no need
13:13:30 3 to have him immediately arrested and detained and that
13:13:35 4 there are no conditions that I can impose that would
13:13:39 5 assure reasonable safety of the community. The
13:13:43 6 government, apparently, thought things were okay up
13:13:45 7 until today. He has not been, up to today, been
13:13:50 8 arrested or detained since January 6th, 2021. During
13:13:54 9 that time period, he was interviewed a number of times.
13:13:57 10 The government had the videos. I just think it becomes
13:14:04 11 intellectually dishonest for me to rule otherwise
13:14:07 12 because you're asking me to now say, notwithstanding the
13:14:10 13 government's inaction, I should find the defendant was a
13:14:14 14 danger during that time period and will continue to be a
13:14:17 15 danger between now and March 16th, 2021. And I don't
13:14:22 16 see any evidence that has sufficiently supported that
13:14:27 17 premise.

13:14:31 18 MR. KRULY: Respectfully, your Honor,
13:14:32 19 obviously the government's response to the violence at
13:14:36 20 the U.S. Capitol has required tremendous, tremendous
13:14:41 21 resources, investing thousands of people. So I
13:14:45 22 understand that this has taken time, but I don't think
13:14:50 23 that should necessarily be held against the government
13:14:52 24 considering the scale and the scope of the
13:14:55 25 investigation, thousands, tens of thousands of leads

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13:14:58 2 around the country, multiple FBI field offices, and a
13:15:02 3 large part of the Department of Justice as a whole. I
13:15:06 4 recognize that the defendant was interviewed by the FBI
13:15:09 5 multiple occasions, but what I think is important to
13:15:13 6 note is that the defendant also lied to the FBI and on
13:15:17 7 almost each and every one of those occasions. So I
13:15:21 8 think, Judge, in the defendant's mind, the risk to him
13:15:25 9 was much less than it is now now that he has been
13:15:30 10 charged with several federal felonies which he wasn't
13:15:33 11 charged with before. He could very well lie to the
13:15:36 12 agents and assumed he had thrown them off the trail and
13:15:40 13 he would not be facing any consequences of his conduct.
13:15:44 14 But now, as I stated, he is charged with very, very
13:15:47 15 serious crimes. And the fact that he lied to the agents
13:15:50 16 on multiple occasions cannot give the Court confidence
13:15:55 17 that he is going to abide by the condition that he, on
13:15:59 18 his honor, is going to stay at his parents' house
13:16:04 19 without leaving, without violating conditions, without
13:16:07 20 electronic monitoring, and without posting bond. And
13:16:10 21 for those reasons, we respectfully ask for a brief stay
13:16:15 22 to allow the government to file a further stay in the
13:16:18 23 District of Columbia so the government can avail itself
13:16:34 24 of its statutory right to seek review of the Court's
13:16:38 25 release order.

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13:16:40 2 MAGISTRATE JUDGE SCHROEDER: I'm perplexed
13:16:42 3 by what I consider to be a very contrary position of the
13:16:46 4 government in this context. It's not a question of was
13:16:52 5 there an undue delay in making the charges against the
13:16:56 6 defendant. I appreciate and I realize and I understand
13:17:02 7 the amount of work that went into investing the entire
13:17:06 8 January 6th, 2021 event, and that investigation
13:17:11 9 continues to be ongoing. I understand that. And I
13:17:14 10 understand that it would take time for the government
13:17:17 11 agencies to sift through all of the evidence that they
13:17:20 12 were acquiring, such as the videotapes as well as other
13:17:24 13 evidence. So it's not a question of my claiming the
13:17:27 14 government delayed in taking action in that respect.
13:17:30 15 It's in the context of once they had the videotape, and,
13:17:34 16 apparently, they had the videotapes at least sometime in
13:17:38 17 late January or early February and had made an
13:17:41 18 identification of the defendant, so they knew who he was
13:17:45 19 and where he was, and then they went out and interviewed
13:17:48 20 him a number of times. It's that in that space of time
13:17:55 21 that causes me to say, well, the government agencies
13:17:58 22 knew where he was, knew what they had in the way of
13:18:01 23 evidence, and yet they didn't place him under arrest or
13:18:05 24 charge him, and so they must not have felt he was such a
13:18:09 25 danger by not having to take that action. It isn't

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13:18:12 2 until March, I forget the exact date when the Criminal
13:18:19 3 Complaint is issued.

13:18:20 4 MR. KRULY: March 10th.

13:18:21 5 MAGISTRATE JUDGE SCHROEDER: March 10th, but
13:18:22 6 they knew who he was and they knew what the video was
13:18:26 7 well before March 10th. In addition, and the Court
13:18:31 8 doesn't have to close its eyes to what is going on in
13:18:35 9 the other district, namely the District of Columbia, a
13:18:40 10 number of defendants who have been charged in similar
13:18:43 11 factual situations, and some with even more violent acts
13:18:48 12 that occurred on January 6th, 2021, have been released
13:18:54 13 by the Court in the District. As I've indicated, we are
13:19:02 14 dealing with a presumption, a presumption of
13:19:05 15 dangerousness, which is a rebuttable one. A presumption
13:19:09 16 of innocence. And as defense counsel rightly points
13:19:13 17 out, bail is not to be used as a punitive measure. Bail
13:19:17 18 is to ensure the appearance of someone in court when
13:19:23 19 required to so appear. As I also indicated, this
13:19:26 20 defendant has not fled, has not taken any action to
13:19:31 21 indicate fleeing once he became aware the government was
13:20:05 22 interested in him and was following up on its
13:20:08 23 investigation. And he voluntarily turned himself in
13:20:12 24 today. And he is going to have to report within a
13:20:15 25 matter of three and a half days in the District of

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13:20:19 2 Columbia. Why you want to tie everything up until the
13:20:24 3 U.S. Attorney's Office in District of Columbia can then
13:20:28 4 file a Notice of Appeal, and God knows how long that is
13:20:31 5 going to take for it to be heard, the defendant will be
13:20:35 6 down in the district. If he is not, well, then the full
13:20:40 7 force of the federal government can be utilized to go
13:20:43 8 find him and arrest him and take him there in custody.

13:20:51 9 MR. ANZALONE: Your Honor --

13:20:52 10 MR. KRULY: Judge --

13:20:53 11 MR. ANZALONE: I'm sorry.

13:20:54 12 MR. KRULY: I believe -- you can go ahead,
13:20:56 13 Alex.

13:20:57 14 MR. ANZALONE: Just briefly, your Honor.
13:20:58 15 The other issue is, I won't speculate as to why we are
13:21:02 16 here on a Friday afternoon, but the reality is that
13:21:08 17 we're here on a Friday afternoon. If the Court grants
13:21:47 18 even a brief stay, it becomes a functional detention
13:21:50 19 order for the weekend. And as the Court has told Mr.
13:21:54 20 Sibick to appear early next week on a Tuesday morning,
13:21:57 21 then the Court's release order is completely void. A
13:22:00 22 brief stay function is a detention order until his next
13:22:05 23 court date. That is all I'll say.

13:22:09 24 MAGISTRATE JUDGE SCHROEDER: That is my
13:22:10 25 point. That coupled with the fact he voluntarily

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13:22:13 2 surrendered himself.

13:22:16 3 MR. KRULY: Yes, Judge. And go ahead, your
13:22:18 4 Honor, I apologize.

13:22:19 5 MAGISTRATE JUDGE SCHROEDER: I'm going to
13:22:20 6 deny the application. I'm going to direct the
13:22:24 7 defendant, as I have, to appear in the District of
13:22:29 8 Columbia, United States District Court on March 16th,
13:22:33 9 2021 at 10 a.m. And that in the interim, he is confined
13:22:37 10 to home incarceration, which is a confinement in the
13:22:43 11 custody of his father and mother. And he is not to
13:22:48 12 leave the residence until it is time to depart to
13:22:52 13 Washington, D.C. for an appearance in the United States
13:22:56 14 District Court there to answer these charges.

13:23:02 15 MR. ANZALONE: Thank you, your Honor. I'm
13:23:03 16 going to ask the Court direct the Marshals to release
13:23:57 17 him immediately. I happen to be downtown, so I will
13:24:00 18 coordinate the return of Mr. Sibick's body to his
13:24:03 19 parents. That seemed a little dark. I didn't mean it
13:24:06 20 like that. To ensure that his parents take custody of
13:24:10 21 him immediately. But I'm asking the Court to direct the
13:24:13 22 release of him immediately.

13:24:15 23 MAGISTRATE JUDGE SCHROEDER: Now, I
13:24:16 24 indicated that his parents were on the phone. Is the
13:24:19 25 father still listening?

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13:24:23 2 MR. ANZALONE: Your Honor --

13:24:25 3 DEFENDANT'S FATHER: Sir, I am here. I am
13:24:27 4 here. This is Dr. Sibick.

13:24:30 5 MAGISTRATE JUDGE SCHROEDER: Would you
13:24:32 6 kindly --

13:24:34 7 DEFENDANT'S FATHER: I'm sorry, hello.

13:24:38 8 MAGISTRATE JUDGE SCHROEDER: Hello.

13:24:39 9 DEFENDANT'S FATHER: Yep, I'm here.

13:24:41 10 MAGISTRATE JUDGE SCHROEDER: Okay.

13:24:46 11 MR. ANZALONE: Mr. Sibick, we're getting a
13:24:48 12 lot of feedback. You need to step outside to somewhere
13:24:52 13 where it's quieter.

13:25:00 14 DEFENDANT'S FATHER: Okay. This is Dr.
13:25:01 15 Sibick, I'm on the line.

13:25:02 16 MAGISTRATE JUDGE SCHROEDER: Okay. Would
13:25:03 17 you formally identify yourself for the record, please.

13:25:06 18 DEFENDANT'S FATHER: Yes. This is Dr.
13:25:08 19 Eugene Michael Sibick.

13:25:10 20 MAGISTRATE JUDGE SCHROEDER: And you are the
13:25:11 21 father of the defendant in this case?

13:25:16 22 DEFENDANT'S FATHER: Yes, sir.

13:25:17 23 MAGISTRATE JUDGE SCHROEDER: I'm looking for
13:25:18 24 his first name.

13:25:19 25 DEFENDANT'S FATHER: Thomas.

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13:25:20 2 MAGISTRATE JUDGE SCHROEDER: Thomas.

13:25:22 3 DEFENDANT'S FATHER: That is correct.

13:25:24 4 MAGISTRATE JUDGE SCHROEDER: And you are
13:25:26 5 prepared and committed to receiving your son upon
13:25:30 6 release today into your custody and to keep him in your
13:25:35 7 residence under home incarceration until it is time for
13:25:39 8 you to drive him to the District of Columbia to have him
13:25:46 9 appear in court on December -- I'm sorry -- March 16th,
13:25:51 10 2021 at 10 a.m. Is that correct?

13:25:53 11 DEFENDANT'S FATHER: That is correct. And I
13:25:56 12 must say that the prosecution made some false statements
13:25:59 13 because I was there when Thomas was interviewed.

13:26:03 14 MR. ANZALONE: Mr. Sibick, just answer the
13:26:05 15 Judge's questions.

13:26:06 16 MAGISTRATE JUDGE SCHROEDER: We don't need
13:26:07 17 to get into that.

13:26:10 18 DEFENDANT'S FATHER: Okay. So, yes, I am
13:26:11 19 prepared to receive him and watch over him and make sure
13:26:14 20 that he is in D.C. on Tuesday, March 16th at 10 a.m.

13:26:21 21 MAGISTRATE JUDGE SCHROEDER: In the United
13:26:24 22 States District Court for the District of Columbia,
13:26:26 23 which is on Pennsylvania Avenue, the courthouse is known
13:26:29 24 as the Judge E. Barrett Prettyman Courthouse.

13:26:33 25 DEFENDANT'S FATHER: Yes, I'm familiar with

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13:26:35 2 D.C. I went to school there and I was there with the
13:26:39 3 Navy in 2017 with the Bureau of Medicine and Surgery.

13:26:44 4 MAGISTRATE JUDGE SCHROEDER: And you are
13:26:45 5 currently a practicing physician.

13:26:47 6 MR. ANZALONE: Currently I'm retired and
13:26:49 7 teach in Niagara University in the biology unit.

13:26:55 8 MAGISTRATE JUDGE SCHROEDER: So you're a
13:26:56 9 person of responsibility?

13:26:59 10 DEFENDANT'S FATHER: Yes.

13:26:59 11 MAGISTRATE JUDGE SCHROEDER: Okay. That is
13:27:00 12 all I need to know.

13:27:03 13 DEFENDANT'S FATHER: Okay.

13:27:03 14 MAGISTRATE JUDGE SCHROEDER: Upon any
13:27:04 15 additional processing by either the U.S. Marshal Service
13:27:07 16 and/or U.S. Probation office, the defendant is to be
13:27:10 17 released to the custody of his father, Dr. Sibick, and
13:27:16 18 he is then to reside in the residence of his father
13:27:20 19 under home incarceration, which means, Mr. Sibick, no
13:27:26 20 leaving the residence at all. You are basically --

13:27:29 21 THE DEFENDANT: Yes, your Honor.

13:27:31 22 MAGISTRATE JUDGE SCHROEDER: -- you are
13:27:32 23 basically confined to the house itself.

13:27:34 24 THE DEFENDANT: Yes, your Honor.

13:27:36 25 MAGISTRATE JUDGE SCHROEDER: Until such time

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13:27:37 2 as you're going to be transported by your father by
13:27:40 3 automobile to the District of Columbia so as to appear
13:27:46 4 in the United States District Court for the District of
13:27:49 5 Columbia on March 16th, 2021 at 10 a.m. Do you
13:27:53 6 understand that?

13:27:53 7 THE DEFENDANT: Yes, I do.

13:27:55 8 DEFENDANT'S FATHER: I do have one question.

13:27:56 9 MAGISTRATE JUDGE SCHROEDER: Yes.

13:27:57 10 DEFENDANT'S FATHER: I do have a question.

13:27:58 11 MAGISTRATE JUDGE SCHROEDER: Yes.

13:28:00 12 DEFENDANT'S FATHER: You mentioned as far as
13:28:02 13 driving. Would it be permissible to fly?

13:28:05 14 MAGISTRATE JUDGE SCHROEDER: It's
13:28:06 15 permissible to fly, yes, if you can get a ticket.

13:28:09 16 DEFENDANT'S FATHER: Okay.

13:28:11 17 MR. KRULY: Judge, I will confirm with the
13:28:13 18 U.S. Attorney's Office for the District of Columbia.
13:28:16 19 There is a possibility that this proceeding on Tuesday
13:28:18 20 may be by Zoom. And if it is, I'll promptly notify Mr.
13:28:23 21 Anzalone so that the defendant does not have to
13:28:27 22 physically appear in the District of Columbia.

13:28:31 23 MR. ANZALONE: Appreciate that. I'll send
13:28:33 24 that message across if that is the case.

13:28:35 25 MAGISTRATE JUDGE SCHROEDER: All right.

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13:28:36 2 I'll expect the government, the Western District of New
13:28:45 3 York to verify with the District of Columbia, as to
13:28:52 4 whether the March 16th at 10 a.m. appearance is going to
13:28:57 5 be conducted by Zoom. If it's going to be conducted by
13:29:00 6 Zoom, then arrangements should be made for Mr. Sibick to
13:29:06 7 attend that Zoom conference in his residence here with
13:29:11 8 his attorney, Mr. Anzalone. And arrangements can be
13:29:14 9 made for that Zoom conference.

13:29:17 10 MR. ANZALONE: Judge, maybe we could ask Dr.
13:29:20 11 Sibick to mute himself because I'm having difficulty
13:29:23 12 hearing.

13:29:26 13 DEFENDANT'S FATHER: Okay.

13:29:33 14 MR. ANZALONE: I tried.

13:29:33 15 MAGISTRATE JUDGE SCHROEDER: I guess we lost
13:29:35 16 you, Dr. Sibick.

13:29:39 17 MR. ANZALONE: No, no. I asked him to mute
13:29:41 18 himself. I was having difficulty hearing your Honor
13:29:44 19 with feedback.

13:29:45 20 MAGISTRATE JUDGE SCHROEDER: Okay. Mr.
13:29:46 21 Kruly, you're going to check with the United States
13:29:49 22 Attorney's Office in the District of Columbia to
13:29:50 23 determine whether the conference or the appearance will
13:29:54 24 be by Zoom or will be in person?

13:29:56 25 MR. KRULY: Yes, I'll do that this

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13:29:58 2 afternoon.

13:29:59 3 MAGISTRATE JUDGE SCHROEDER: All right. And
13:30:00 4 you'll notify Mr. Anzalone so he can notify the
13:30:04 5 defendant's father as to what arrangements are going to
13:30:09 6 be made for March 16th, 2021.

13:30:13 7 MR. KRULY: I will, your Honor.

13:30:14 8 MAGISTRATE JUDGE SCHROEDER: All right.
13:30:16 9 Well, thank you everyone. Stay safe.

13:30:19 10 MR. ANZALONE: Okay.

13:30:21 11 MR. KRULY: Okay. Thank you, Judge.

13:30:22 12 THE DEFENDANT: Thanks, your Honor.

13 * * *

14 CERTIFICATE OF REPORTER

15
16 I certify that the foregoing is a correct transcript
17 of the record to the best of my ability of proceedings
18 transcribed from the audio in the above-entitled matter.

19
20 S/ Karen J. Clark, RPR

21 Official Court Reporter
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